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December 13, 2021

VIA ECF

Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Solid 21, Inc. v. Richemont North America, Inc. et al.*, No. 1:19-cv-01262-LGS

Dear Judge Schofield,

This firm is counsel to Defendants in the above-captioned litigation (“Richemont”). We write with a case law update that should have dramatic significance to the parties’ pending cross-motions for summary judgment.

As part of its motion for summary judgment, Richemont has argued that its use of “red gold” is “fair use” as a matter of law. *See* ECF Nos. 133 at 19-22 and 152 at 19-23.

In its opposition to Richemont’s motion, Solid 21 cites repeatedly to the fact that Solid 21 recently defeated a motion for summary judgment on this issue in a parallel proceeding that Solid 21 has pending against the watchmaker Breitling in the District Court of Connecticut. ECF No. 142 (Solid 21’s cites to the decision are numerous). In Solid 21’s words, “the court in the pending *Solid 21-Breitling* case recently denied the defendants’ assertion of fair use in that case *on facts nearly identical to those here*.” ECF No. 142 at p. 25 (emphasis added).

On Friday, December 10, 2021, on a motion for reconsideration, the Breitling court reversed its earlier ruling. The Court has now entered summary judgment for Breitling on the issue of fair use. *Solid 21, Inc. v. Breitling U.S.A., Inc., et al.*, No. 3:19-cv-00514 (MPS) (D. Ct. December 10, 2021) (available at https://ecf.ctd.uscourts.gov/cgi-bin/show_public_doc?2019cv0514-204). As Solid 21 has acknowledged, this ruling was made on facts “nearly identical” to those present here.

We did not attach a copy of the recent opinion because of the Court’s rules regarding page limits for letter submissions. Please let us know if the Court wishes us to submit such a copy or if there are any other questions.

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Respectfully submitted,

/s/ John P. Margiotta

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cc: All counsel of record